

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors: Kelly et al.	Confirmation No.: 8036
Serial No.: 10/085,164	Atty Dkt. No.: A539WTN (121116.00005)
Filed: February 26, 2002	Group Art Unit: 2892
	Examiner: Pham, Hoai V.
Title: ENCAPSULATED DIE PACKAGE WITH IMPROVED PARASITIC AND THERMAL PERFORMANCE	
To: Mail Stop: Petition Commissioner for Patents P. O. Box 1450 Alexandria, Virginia 22313-1450	

PETITION TO THE DIRECTOR UNDER 37 C.F.R. 1.181(a)(1)

Applicants hereby petition the Director of Art Unit 2800 to require the Examiner of the subject application to respond to the Appeal Brief filed February 4, 2008 in this case.

In response to an Office Action mailed July 25, 2006, a first Appeal Brief was filed on January 22, 2007. Instead of filing an answer to that Appeal Brief, the Examiner apparently agreed with the Applicants that the rejections were improper, and elected to re-open prosecution, but instead cited virtually identical rejections of all pending claims in an Office Action mailed February 25, 2008.

After reviewing the new Non-Final Office Action and determining that the rejections were still improper and identical in almost every single case, Applicants filed a renewed Notice of Appeal and Appeal Brief on February 4, 2008. Again, instead of filing an answer, the

Examiner apparently agreed with Applicants that the rejection was again improper and re-opened prosecution on July 24, 2008, again imposing virtually identical rejections.

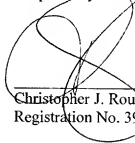
While M.P.E.P. 1207.04 does allow an Examiner to re-open prosecution in response to an Appeal Brief, the undersigned notes that this unusual procedure appears to be being used more frequently, particularly in certain art units, apparently as a means to delay prosecution, increase the costs of prosecution, and to prevent improper rejections from being reviewed and reversed by the Board of Patent Appeals and Interferences (BPAI). As the Applicants have appealed based on the improper construction of the claims adopted by the Examiner, and as the prior art being cited against the claims in each Office Action includes art that was previously of record, there appears to be no legitimate basis for the Examiner's refusal to file an Answer in this case. At a minimum, the Answer can include any new grounds of rejection that the Examiner wishes to assert, but there is simply no justification for the repeated re-opening of prosecution to cite identical rejections and deprive Applicants of the right to appeal the rejection of the claims to the BPAI. The right to Appeal is provided by 35 U.S.C. 134, which does not provide for the Office to implement procedures that can be used to arbitrarily and capriciously deprive an Applicant of that right.

In addition, in the comments to the Rules of Practice Before the Board of Patent Appeals and Interferences in Ex Parte Appeals, Fed. Reg. Vol. 73, No. 112, 32938 et seq. at 32955, the Office stated that a if "there are some examiners who in the opinion of an applicant are not doing their job, the applicant has the responsibility to call the matter to the attention of a Director in the involved Technology Center," and that "Technology Center Director without knowledge of difficulties experienced by an applicant is not likely to be able to take steps to improve the examination process." The Applicants further note that the new rules further provide for imposition of sanctions against an appellant for engaging in dilatory tactics. Applicants believe that the actions of the Examiner in re-opening prosecution twice merely to cite virtually identical rejections and to cause Applicants to incur the costs and delay of filing an Appeal brief at least three times (and possibly more, if this pattern of behavior persists), should be sanctioned. The Applicants further note that both the Examiner and the Examiner's supervisor have been engaged

in this improper behavior. An explanation of what steps are being taken to improve the examination process in response to this petition is requested.

No fee is believed to be due, as this petition is filed pursuant to 37 C.F.R. 1.181(a)(1). The Commissioner is authorized to charge any additional fees that may be required or to credit any refund to Deposit Account No. 10-0096.

Respectfully submitted,



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